

ARTICLE 27-04

NORTH DAKOTA NEW JOBS TRAINING PROGRAM

Chapter

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27-04-01-01. Definitions. Terms used in this chapter, unless the context clearly indicates otherwise, have the following meanings:

1. "Act" means chapter 493 of the 1993 Session Laws.
2. "Applicant" means a business submitting a project application for approval by job service North Dakota.
3. "Debt service" means the payment of principal and interest on a repayable loan in accordance with the repayment schedule of the training agreement.
4. "Eligible employee" means a person employed throughout the term of the agreement in a new job position identified in the agreement and who is subject to state income tax withholding for the state of North Dakota.
5. "Full-time job" means a job providing thirty-two hours of work per week for a minimum of nine months each year.
6. "Gross payroll" means the gross wages and salaries for new jobs in the first full year after the date of commencement of the project.
7. "Preliminary agreement" means a written document between a business and job service North Dakota agreeing to pursue the development of a training project to train new employees.

8. "Program funds" means any money loaned to a business as a result of a training agreement being entered into under the Act.
9. "Reimbursable" or "project costs" means all necessary, authorized costs providing program services identified in the agreement.

History: Effective April 1, 1994.

General Authority: S.L. 1993, Ch. 493

Law Implemented: S.L. 1993, Ch. 493, § 2

27-04-01-02. Project funding. An award to a new or expanding business for the purpose of training current and new employees for new job positions must be made in the form of a loan to that business by the department or a community. Funds received in the form of a loan must be used to train employees hired in new job positions and cover administrative costs identified in the agreement.

Job service North Dakota shall calculate the maximum loan amount allowable for new job training projects. The estimated state income tax withholding credit available to the project must be calculated using "withholding" averages developed by the state tax commissioner based on the hourly wages that are to be paid to the employees in new job positions covered in the agreement and must cover principal and interest payments for the entire loan repayment period. The repayment period may not exceed ten years. Reserves may be included when determining the total loan amount in order to meet initial interest payments until sufficient state withholding tax credits are collected to make payments on both principal and interest.

Financial assistance awarded to a project must be based on the actual cost of allowable services and administrative costs as identified in the agreement. The interest rate to be paid and repayment schedule on a loan shall be determined by the lending entity. Issuance of the proceeds of a loan to a business must be made on a cost reimbursement basis after the business has incurred the costs. Approval of disbursement of the loan must be made jointly by job service North Dakota and the business. Funds requested must be commensurate with training needs. Program funds may not be used to cash flow a business.

The specific vocational preparation guide of the dictionary of occupational titles must be used for determining the length of allowable on-the-job training periods. When a specific job is not listed, time periods must be based on the specific vocational preparation guide for similar jobs.

On-the-job training may not exceed fifty percent of the individual's gross annual wages during the first full year after the date of commencement of the project.

History: Effective April 1, 1994.

General Authority: S.L. 1993, Ch. 493

Law Implemented: S.L. 1993, Ch. 493, § 2

27-04-01-03. Application fee. As set forth in the preliminary agreement, job service North Dakota may charge each applicant an application fee to cover part or all administrative and legal costs incurred prior to project funding.

If job service North Dakota elects to charge an application fee, this application fee must be charged at the same or equitable basis for each business that applies.

History: Effective April 1, 1994.

General Authority: S.L. 1993, Ch. 493

Law Implemented: S.L. 1993, Ch. 493, § 2

27-04-01-04. New or expanding business threshold eligibility criteria. Job positions for which training is planned must be positions intended by the employer to exist on an ongoing basis with no plan termination date.

Training is available only to individuals who are eligible employees of the business and who are subject to state income tax withholding.

Jobs that formerly existed do not qualify for new employee training services under the provision of this program. A job is considered to have "formerly existed" if it was part of the business's payroll within North Dakota at the time of commencement of the project.

The earliest date on which program funds may be used to pay training expenses incurred by the project is the date on which job service North Dakota signs the preliminary agreement.

History: Effective April 1, 1994.

General Authority: S.L. 1993, Ch. 493

Law Implemented: S.L. 1993, Ch. 493, § 2

27-04-01-05. Application process. Applications for training assistance must be submitted to job service North Dakota on behalf of the business, jointly by the business, and by the department or a community certifying that the employer has qualified for a loan.

Job service North Dakota shall use an application for assistance form designated for this purpose.

Information required on the application must be described in the application instructions.

Applications must be submitted to:

North Dakota New Jobs Creation Program
Job Service North Dakota
Job Training Division
1000 East Divide Avenue
P.O. Box 5507

Required forms and instructions are available at this address.

To be funded, the employer must qualify for a loan from the department of economic development and finance, North Dakota future fund, or a community to cover the cost of the training identified in the project.

Job service North Dakota may approve, reject, defer, or refer an application to another training program.

Job service North Dakota reserves the right to require additional information, including a preaward audit or survey of the business.

Before an application is approved for funding by job service North Dakota, job service North Dakota shall investigate the applicability of other training programs such as those provided by the Job Training Partnership Act, job opportunities and basic skills program, North Dakota board for vocational and technical education, department of public instruction, and other state and federal agencies. This investigation must be completed within fifteen days or as soon thereafter from the date the application is received and all necessary information has been provided by the employer.

History: Effective April 1, 1994.

General Authority: S.L. 1993, Ch. 493

Law Implemented: S.L. 1993, Ch. 493, § 2

27-04-01-06. Final agreement. Job service North Dakota shall enter into a final agreement with the business within ninety days of the commencement date of the preliminary agreement. The final agreement must contain the following provisions:

1. The starting date and ending date of the training.
2. The length of time each job category will be provided training.
3. The number of new job slots to be created and the number of new jobs to be trained.
4. A repayment schedule outlining all principal and interest payments to be made during the repayment period.
5. Default provisions that are consistent with these rules.

6. A provision specifying that, upon occurrence of an event of default, the business is ineligible for state income tax withholding credit and shall immediately remit payment in full to satisfy the remaining debt service.

History: Effective April 1, 1994.

General Authority: S.L. 1993, Ch. 493

Law Implemented: S.L. 1993, Ch. 493, § 2

27-04-01-07. Notification of new jobs training projects. When a final agreement to participate and a new job training project is entered into, job service North Dakota shall provide copies of the agreement to the lending agency, state tax commissioner, local development corporation, and state treasurer within ten days of the date of signing the agreement. If, at any time after submitting the agreement, the estimates are revised or the agreement is modified to the extent that it would affect the reporting requirements, job service North Dakota shall notify the lender, state tax commissioner, and state treasurer within thirty days.

History: Effective April 1, 1994.

General Authority: S.L. 1993, Ch. 493

Law Implemented: S.L. 1993, Ch. 493, § 2

27-04-01-08. Events of default. An event of default exists if:

1. The business fails to train at a minimum the number of individuals specified in the final agreement.
2. The business fails to complete the training program.
3. Prior to project completion, the business ceases or announces the cessation of operations at the project site, unless such operations are transferred to another facility in the state of North Dakota and job service North Dakota receives assurances of continued repayment.
4. The business fails to act in accordance with the provisions of the training agreement.
5. The business directly or indirectly makes any false or misleading representations or warranties in the program application or training agreement, reports, financial statements, or any other documents that are provided to job service North Dakota.
6. The business fails to make required payments to job service North Dakota and to service providers as identified in the agreement.
7. The business becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors or the business applies for or consents to the appointment of a trustee or receiver for the business or the major part of the property.

8. The business ceases or announces the cessation of operation at the project site prior to completion date of the term of the agreement, unless such operations are transferred to another facility in the state of North Dakota and job service North Dakota receives assurance of continued employment and repayment.
9. The business takes corporate action to affect any of the preceding conditions of default.
10. The business fails to file and pay any state taxes that may be required to be filed and paid to the state of North Dakota.

History: Effective April 1, 1994.

General Authority: S.L. 1993, Ch. 493

Law Implemented: S.L. 1993, Ch. 493, § 2

27-04-01-09. Options and procedures on default. The business failing to comply with any requirements other than repayment contained in the training agreement must be sent written notice from job service North Dakota which specifies the issues of noncompliance and must be allowed twenty days from the date the notice is sent to affect and cure. If noncompliance is of such a nature that a cure cannot be reasonably accomplished within twenty days, job service North Dakota may extend the period of corrective action to a maximum of sixty days.

Job service North Dakota shall notify the lending institution, local development corporation, state tax commissioner, and state treasurer within five working days, using a designated notice of possible default form, whenever job service North Dakota determines that an event of default has occurred or is likely to occur.

Job service North Dakota shall document its efforts to reconcile the condition responsible for the default and shall provide the lender, state tax commissioner, and state treasurer with copies of all related correspondence upon request.

If job service North Dakota's efforts to reconcile are successful, job service North Dakota shall notify the lender, local development corporation, state tax commissioner, and state treasurer in writing to continue project operations. Continuation of project operations may be subject to new conditions imposed by job service North Dakota as part of the reconciliation.

When job service North Dakota's efforts to reconcile are unsuccessful, job service North Dakota shall provide a copy of the final determination to the lending institution, local development corporation, state tax commissioner, and state treasurer.

History: Effective April 1, 1994.

General Authority: S.L. 1993, Ch. 493

Law Implemented: S.L. 1993, Ch. 493, § 2

27-04-01-10. Remedies upon default. The exercise of remedies upon the occurrence of any event of default described above is subject to applicable limitations of federal bankruptcy law.

If job service North Dakota determines that a business is in default and the default has not been cured within the time period stated in the contract, job service North Dakota may notify the state tax commissioner and the state treasurer to withhold state income tax withholding credit payments to the business without notice to the business.

No remedy conferred upon or reserved to job service North Dakota, the state tax commissioner, or the state treasurer by the Act, these rules, or the training agreement is intended to be exclusive of any other current or future remedies existing in law or equity or by statute.

Any delay or omission by job service North Dakota to exercise any right or power of the Act, these rules, or the training agreement does not relinquish or diminish authority to act and does not constitute a waiver of default status. Any such right or power may be exercised at any time required and as often as deemed expedient.

Unless required by these rules, neither job service North Dakota, the state tax commissioner, nor the state treasurer is required to provide written or other notice to the business regarding any circumstances related to and including a declaration of an event of default.

An event of any requirement of the Act, these rules, or the training agreement relating to a default should be reached by either party and then waived by the other party. Such waiver is limited to the specific breach being waived and has no bearing on any subsequent breach.

History: Effective April 1, 1994.

General Authority: S.L. 1993, Ch. 493

Law Implemented: S.L. 1993, Ch. 493, § 2